



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss S Ohara

**Respondent:** Penam Pubs Limited

**Heard at:** Southampton (by VHS) **On:** 6 & 7 June 2022

**Before:** Employment Judge Scott

## Representation

Claimant: In Person

Respondent: Did not attend and was not represented

# JUDGMENT

1. The Claimant was dismissed without notice. The respondent is ordered to pay the claimant the gross sum of £1529 calculated as follows; 11 weeks' pay at a rate of £139 per week.
2. The Claimant's unfair dismissal claim succeeds.
3. The Respondent is required to pay the claimant a basic award for unfair dismissal of £1,251 calculated as follows; The Claimant's average weekly pay was £139. At the time of her dismissal the Claimant had 11 years' continuous service. Of this, she was under 21 for 4 years, and over 21 for 7 years. She is entitled to 9 weeks pay at £139 per week.
4. The Respondent is required to pay the claimant a compensatory award as compensation for unfair dismissal of £12932.10. This award is made of the following elements:
  - a. Loss of earnings from 17.05.2021 – 01.04.22, 42 weeks at £139 per week. A net payment of £6394
  - b. Loss of earning from 01.04.22 – 07.06.22 , 9 weeks at £152 per week. A net payment of £1368.
  - c. Future loss until 01.01.23, 29 weeks at £152 per week. This figure is reduced by 20% giving a net total of £3526.40.
  - d. The sum of £304 for loss of statutory rights.
  - e. Deduction for notice pay of £1529.
  - f. The respondent failed to follow the ACAS code of practice, and accordingly, the claimant's award is subject to a 10% uplift as claimed.
  - g. The respondent failed to provide the claimant with a section 1 statement of terms and conditions of employment pursuant to the Employment Rights

Act 1996. Under section 38 of the Employment Act 2002 the Respondent is ordered to pay to the Claimant the sum of £556 representing 4 weeks gross pay.

5. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 applies to the unfair dismissal compensatory award. The prescribed element is £7762 and the prescribed period 17.05.2021 to 07.07.22. The total monetary award is £15712.10 and the excess of monetary award over prescribed element £7950.10

## **NOTE**

1. The Recoupment Regulations apply to this award, and I am required by law to explain their operation to you. Included in the award which the tribunal has ordered the Respondent to pay the Claimant there is a sum of £7762 in respect of her pay from the day she was dismissed until to-day. If she keeps the universal credit she has received up to to-day, she will be better off than if s/he had been at work – she will have made a profit as a result of the award. I am sure it will not be a surprise to learn that the Government would like its money back. The way the Government gets it back is through the Recoupment Regulations.
2. The Respondent must retain that part of the award which relates to the Claimant's loss of earning up to to-day - it is called the Prescribed Element and is £7762, until the Respondent receives from the Department for Work and Pensions a Notice. The Notice will either require the Respondent to pay all, or part, of the Prescribed Element to the Department, or tell the Respondent that it does not require any payment. When the Respondent receives the Notice the Respondent must pay to the Department for Work and Pensions the sum specified in the Notice and the balance should be paid to the Claimant. The rest of the award, over and above the Prescribed Element, which amounts to £7950.10, is due to Claimant straight away.
3. The Respondent will not be required to make any payment of the prescribed element of the award until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State will normally serve such recoupment notice or notification on the employer within 21 days after the Tribunal's Judgment was sent to the parties.

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Employment Judge **Scott**

Date 28/06/22

JUDGMENT SENT TO THE PARTIES ON  
12 July 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

### Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented

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by either party within 14 days of the sending of this written record of the decision.

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